SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1969

NO. 954

JOHN A. HUTTER, JR., et al,

Petitioners

vs.

CITY OF CHICAGO,

Respondent

PETITION FOR A WRIT OF CERTIORARI

The Illinois Supreme Court

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INDEX

	Page
Opinion Below.....	2
Jurisdiction.....	2
Question Presented.....	3
Statute Involved.....	3
Statement.....	4
Reasons For Granting The Writ In This Case.....	7

IN THE

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vs.

CITY OF CHICAGO, ILLINOIS

Respondent

PETITION FOR A WRIT OF CERTIORARI

The Illinois Supreme Court

John A. Hutter, pro se and on behalf of John A. Hutter, Jr., et al., prays that a writ of certiorari issue to review the order of the Supreme Court of Illinois entered in the entitled case 42401 on September 25, 1969 and further

order on November 19, 1969 in which motion by petitioners for reconsideration of order denying petition for leave to appeal and to recall mandate was denied.

And also to review the order of the Appellate Court First District of Illinois No. 53386 entered June 16, 1969 denying petition for rehearing of order affirming the judgment order of the Circuit Court.

OPINION BELOW

The petition for leave to appeal to Illinois Supreme Court from the Appellate Court was denied and no opinion rendered.

The opinion of the Appellate Court, First District, affirming the order of the Circuit Court is reported in advance sheets: 110 Illinois Appellate 2d page 321.

JURISDICTION

The judgment of the Supreme Court of Illinois is dated and was entered on September 25, 1969 and a motion for rehearing denied on November 19, 1969.

The Judgment of the Appellate Court affirming judgment of Circuit Court and denying petition for rehearing was entered June 16, 1969.

The jurisdiction of this court is invoked under 28 USCP 1257(3).

QUESTION PRESENTED

The question presented here is whether the petitioners may be deprived of the use of their real property, contrary to law, without violating their rights under the United States Constitution amendment 14, pertaining to due process and equal treatment under the law.

A further question presented here is whether an action by a city demanding fines and that defendant be found guilty of violating ordinances is an action whereby the petitioners can be subject to double jeopardy without violating their constitutional rights under amendment 14 pertaining to due process.

STATUTE INVOLVED

The statutes (ordinances) involved are that portion of the municipal code of Chicago relating to buildings (a) chapter 78 Existing Buildings.

15-1 Every family unit shall have safe, unobstructed means of egress leading to safe and open space at ground.

15-4 In existing buildings where exits do not comply with the requirements of Chapter 67 and in which hazardous conditions exist because of the number, width, construction, or location of exits, the commissioner of buildings may order additional or rearrangement of existing exits to assure adequate safety of the occupants. (b) Chapter 67 Exit Requirements.

67-4 There shall not be less than two exits from every building, floor, space or room, except that one exit shall be permitted under the following conditions:

(e) In multiple dwellings, one exit door shall be permitted to a public corridor from a dwelling unit having not more than five habitable rooms and having an area not exceeding 1,000 square feet.

STATEMENT

Respondent, the City of Chicago, brought this suit to enforce the correction of alleged violations of the building code, namely in their complaint under 3b. "Provide additional means of egress for the following location. Provide additional means of egress, top floor all apartments."

Appellants, in answer, denied they were in violation of any provisions of building code.

As verified in opinion of Appellate Court building of appellants was constructed under permit issued by the Building Department in 1936. The pertinent facts are these:

The building is a three story corridor type building (called four story by court).

The opinion of Appellate Court states: "The transcript of the trial reveals that each of the apartments on the first, second, and third floors has

an entrance on a common or public corridor and that the corridor has a stairway at each end descending to the ground floor. Thus, as admitted by the City, the occupants on the first three floors have two effective and acceptable means of egress."

"Ingress and egress to the front apartment on the fourth floor is by means of a stairway leading from the third floor corridor to the fourth floor."

"Ingress and egress to the middle and rear apartments is by a stairway from the third floor corridor."

Thus the Appellate Court states that all of the requirements to qualify these apartments under 67-4(e) have been met.

SIMILARITIES OF ABOVE PENTHOUSE APARTMENTS WITH ALL OTHER APARTMENTS:

(a) All have a locked door on public corridor.

(b) All have as many locked inner doors as possible. This building is located in a changing neighborhood and tenants live in mortal fear of attack as outlined by Milton Eisenhower in his report. For example, a mob wanted to get at one of the tenants in this building, so they chopped thru two doors, broke a 6 foot square hole thru a wall, destroyed the furniture and splashed the walls with ink, paint, eggs and excrement. The police were called and arrested some. Our daughter, Marian Coy, Co-defendant, filed

a complaint but before the due date for the hearing, without notice, the culprits were discharged!!!

(c) All apartments have halls, stairs, which are private.

(d) All apartments at one time or another are occupied, singly, married couples, friends or strangers to cut down costs.

(e) All apartments have a single means of ingress or egress located in a public corridor.

(f) All have five rooms or less and do not have an area larger than 1,000 ft.

(2) Differences of above penthouse apartments from all other apartments.

(a) The two apartments, front, and middle rear, in question, differ from all other apartments in that they are safer for they have several optional (not required) exits that all other apartments do not have and are more secure from intruders. The middle part of rear apartment is really an all glass sun room with a bar.

(b) They have more than one level; the front apartment has three levels and the middle rear has two.

The roof of the building is over the third floor (fourth level). The entire north half is clear from front to

rear. Parts of the remaining roof level contains the second level of the front and middle rear apartment and the next higher level of the front apartment would be one level above the roof (fifth level). Both of these apartments have been in operation for over thirty years. The front one always occupied by petitioners, John and Clara Hutter.

The middle rear was occupied for a long time by a single man. But to share costs in this changing neighborhood, it has at times been occupied by two to three adults. At this writing it is occupied by <u>one</u> man.

REASONS FOR GRANTING THE WRIT IN THIS CASE

This cause may not be as dramatic as those referred to by Chief Justice Vinson in 1949 when he said "Those of you whose petitions for certiorari are granted by the Supreme Court will know, therefore, that you are in a sense prosecuting or defending class action, that you represent not only your clients but tremendously important principles upon which they are based, the plans, hopes and inspirations of a great many people throuout the country."

Perhaps the only difference the average person in the United States has from the Soviet Union when confronted with the tremendous power of his government, is the federal constitution, yet the gulf between those theoretical rights and their application is enormous.

Anyone seeking the protection of those rights is confronted with an overwhelming obstacle course.

The thrust of the cause at hand is whether any state can deprive a person of his rights to property contrary to law (statute or ordinance) when a court has weighed the evidence and found that person comes within the scope and protection of such ordinance. The Appellate Court, First District, of Illinois, did so find.

Most of the trial and most of the Appellate Court's decision is taken up with:

1. Discussions of non required exits which have no bearing on this case. Only the single legal exit to public corridor is involved.

2. A misinterpretation of cases cited. They were presented by petitioners in his brief to support their contention that after thirty years of following the statutes (ten years after introduction of current ordinances). The city should be estopped from violating those laws and depriving petitioners of their property rights.

As an attorney, John A. Hutter (who is appearing pro se) has great respect for all courts and is conscious of the difficulty and pressure under which the court in question, the Circuit Court of Cook County, Illinois, sitting in Chancery, hearing cases exclusively involving alleged building code violations, conducts its hearings.

However, in a time like the present, when all of our cherished institutions are being seriously challenged, it behooves all courts to conduct all proceeding in a manner above reproach.

While petitioner John A. Hutter and Clara Hutter, his wife, were absent from the state, a summons was left with a grammar school age granddaughter, at an address other than the residence of petitioners.

The due date for filing an answer had arrived before petitioners returned to the state and were informed of what took place. This is serious, for example, in this same court a few weeks earlier, the Honorable Frank H. Machala ordered a building razed to the ground. When the owner went to make some repairs on his building, it was gone. The newspapers had a field day with this. It turned out the man had never been served and knew nothing of the proceedings.

This court sitting in Chancery, the Court of conscience, closely resembles a traffic court. The day defendants were due to appear over one hundred cases were on call.

The average case, either with or without counsel, lasted about ten minutes. It seemed the court asked one of two questions - "How long will it take to vacate apartment?" or "How long will it take to get a contractor?"

6a. It appeared that the primary

function of the court was to convince the average small property owner that such ownership was a losing proposition compared with the situation at the time they were young and started a lifetime of saving so they would have a little security in their old age independent of charity or relief.

One old foreign speaking man who was hauled into court by a do-gooder neighborhood association for not painting his home, said he did not have the money, could not do it himself and liked his home the way it was. The court told him he was anti-social and perhaps the court should have him put away.

6b. The general idea was that the private property owner should get out and make way for Urban Renewal and Public Housing.

7. The court seemed amazed when defendants claimed that they were not in violation of any building department regulations. Witnesses had no place to sit. The court had a reporter but would not permit defendants to buy a transcript. In this case defendants had to engage a reporter who was from the same agency as the court's reporter and spend several hundred dollars to obtain a transcript. No place was provided for defendants reporter to sit and she had to stand throughout the hearing. The hearing was interrupted several times to hear other cases and defendant had to pay reporter to stand by. This was a severe burden upon defendants who are seventy two years of age and

ill, retired and on social security and property is their homestead.

The trial before His Honor Judge Frank H. Machala on February 27 was really final and complete. The complaining witness testified that all items except the egress of apartments in question had been complied with and that the doors of these apartments opened on the third floor public corridor.

8. Defendants testified that on the basis of complaining witnesses testimony, defendants apartments complied with Section 67-4(e) and the defendants should be discharged.

The court refused and said he would send out another inspector (one who was adept at evading questions).

Thus defendants were really put in double jeopardy.

9. In the second or repeat trial before the Honorable Alvin J. Kvistad, nearly a hundred pages of testimony transpired in an effort to undo the facts simply presented in previous trial.

When corporation counsel Sidney Gordon faltered, Judge Kvistad took over. There was so much harassment of John Hutter, counsel for defendants, that it proved almost impossible to represent the same evidence as in the trial before Judge Machala.

Federal questions were raised

as soon as they arose and were apparent.

These facts were presented to the Appellate Court by petitioners in their reply brief. They were also presented in oral argument before this court and the court was gently reminded that the conduct of the trial below and the courts finding violated the United States Constitution, amendment 14, relating to due process and equal treatment.

The Appellate court indicated that appellants would be secure in their rights.

On page 3 of petition for rehearing to Appellate court, petitioners state "The misinterpretation of Section 67-4 of the Municipal Code of Chicago, denies the defendants due process as provided by amendment 14 of the U.S. Constitution because it deprives defendants of their property and income unlawfully." Also reiterated on last page.

In petitioners petition to the Supreme Court of Illinois page 1, under iii "Statement of the points relied upon for reversal of judgment of Appellate Court, petitioners state - 1. "Defendant-appellants are deprived of their property, by this order, unlawfully without due process in violation of amendment 14 of the United States Constitution and the Constitution of the State of Illinois (also on page 5).

The Illinois Supreme Court refused to even consider the violation of petitioners constitutional rights.

Perhaps the turmoil within the court was a factor.

First, there were seven justices in that court, then two resigned because of scandal arising in Chicago. Then there were five but one died and then there were four - the minimum for a quorum. Of the four, three were graduates of Chicago politics who probably would hesitate to become involved.

It is frightening to think that only in this court does a citizen have protection of his constitutional rights when violated by a state or state court and that probably there is only one chance in twenty that this court will be able to consider his petition for a writ of certiorari.

The refusal of the court below to consider these federal questions makes necessary this petition for a writ of certiorari to secure redress of denial of constitutional rights.

This cause certainly must be indicative of a great class of residents of the United States whose rights under the federal constitution are abridged and denied and who do not have the knowledge or the means to secure and enforce its protection of their rights.

CONCLUSION

For the reasons stated above it is respectfully submitted that their petition should be granted.

_____

Attorney pro se and for the Appellants

Date_____

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OCTOBER TERM 1969

NO. 954

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Petitioners

vs.

CITY OF CHICAGO,

Respondent

APPENDIX

The Illinois Supreme Court

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I N D E X

	Page
APPENDIX A..... No. 67 CH 51317 Order entered May 29, 1968 Circuit Court of Cook County, Illinois, Hon. Judge Alvin J. Kvistad, Presiding	1
APPENDIX B..... No. 53386 Order entered June 16, 1969 Appellate Court, Illinois, First District, Affirming Judgment of Circuit Court and denying petition for rehearing	2
APPENDIX C..... No. 42401 Order entered on September 25, 1969, Illinois Supreme Court denying petition for leave to appeal from Appellate Court. Motion for rehearing denied November 19, 1969	9

APPENDIX A
No. 67 CH 51317

This matter coming on to be heard on the trial of the Plaintiffs' Complaint Paragraphs 3A through 3F, the Plaintiff and Defendants giving testimony in open court and the Court being advised in the premises doth find:

1. That the rear stairwell at the premise located at 3526 No. Marshfield, in the City of Chicago, County of Cook, State of Illinois, between the 3rd and 4th floor is a common stairwell and not a private entrance to an apartment.

2. That the second means of egress at the subject premises on the 4th floor or penthouse apartments is dangerous and hazardous as it requires either for entry to another individual's apartment and/or breaking of glass to open a door or window or the climbing and descending of a ladder or ladders.

It is therefore Ordered, Adjudged and Decreed:

1. The Defendants vacate any two apartments on the fourth floor.

Raymond F. Simon
Attorney for Plaintiff
City Hall
Chicago
744-4000

May 29, 1968

ENTER: /s/ Alvin J. Kvistad
Judge 5/29/68

APPENDIX B
No. 53386

CITY OF CHICAGO, a Municipal Corporation, Plaintiff-Appellee vs. JOHN A. HUTTER, JR., CLARA N. HUTTER, his wife and MARIAN COY, Defendants-Appellants	) APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY) HONORABLE ALVIN J. KVISTAD, TRIAL JUDGE

MR. JUSTICE BURMAN DELIVERED THE OPINION OF THE COURT.

The City of Chicago brought suit in the Circuit Court of Cook County against the defendants to compel them to make certain improvements to a building owned by them so that the building would comply with certain provisions of the Municipal Code of Chicago. The case was heard by the trial court without a jury. After hearing testimony from both parties, the court ordered that the defendants vacate any two apartments on the fourth floor of their building which was found to violate Sections 67-4 and 78-15.1 of the Municipal Code. The defendants appeal from the court's order.

The building in question is located at 3526 and 3528 North Marshfield in

case at bar that would warrant the application of the doctrine of estoppel.

The public benefit resulting from the enforcement of the ordinance in the instance case clearly outweighs any detriment or loss of income suffered by the defendants. Protection from fires and the resulting casualties is the primary duty of the city. Thus, for the foregoing reasons, we are of the opinion that the Judgment Order of the Circuit Court should be affirmed.

JUDGMENT AFFIRMED.

ADESKO, P. J, AND MURPHY, J.
CONCUR.

Chicago. Originally, there were two two-story buildings on the site, one of which was of stone construction. A permit was issued in 1936 by the Building Department of the City allowing the defendants to construct and remodel the premises. Presently, a four-story multiple dwelling brick building with a basement occupies the site.

In its two-count complaint filed on December 15, 1967, the City alleged that various violations of the Municipal Code existed in the building. However, at the trial the sole issue considered by the court was whether there existed the requisite means of egress from each of the three apartments on the top (fourth) floor of the premises.

The City alleges that the defendants are in violation of Section 78-15.1 of the Municipal Code which provides that "every family unit and rooming unit shall have safe, unobstructed means of egress leading to safe and open space at ground level." The City further alleges that the defendants' building violates Section 67-4 of the Municipal Code, the applicable portion of which provides:

> There shall be not less than two exits from every building, floor, space or room, except that one exit shall be permitted under the following conditions:
>
> (e) In Multiple Dwellings, one exit door shall be permitted to a public corridor from a dwelling unit having not more than five habitable rooms and having an area not exceeding 1,000 square feet.

The City contends that the defendants are in violation of these two sections because the fourth floor apartments lack the required means of egress. Further, the other purported means of egress from the fourth floor apartments are neither safe nor unobstructed and do not lead to the ground level.

The defendants argue that they are not guilty of any violations of the Municipal Code. Alternatively, the defendants contend that their building was constructed under a permit issued in 1936 and conformed with all Code requirements at that time. The defendants question whether the public welfare demands retroactive application of the present Code in light of the fact that "the defendants would suffer unreasonable exactions as compared with the resulting public benefit if they are forced to vacate two of the penthouse units which are the most desirable and command the highest rent in the building." Lastly, the defendants claim that "a property owner should be protected and the City should be estopped from ignoring the decisions, orders, and commitments made by its building department" in the past.

In order to determine the validity of defendants' first claim, i.e., that they are not guilty of any Code violations, the record must be examined in some detail. "The transcript of the trial reveals that each of the apartments on the first, second and third floors has an entrance on a common or public corridor and that the corridor has a stairway at each end descending to the ground floor. Thus, as admitted by the City, the occupants of

the apartments on the first three floors have two effective and acceptable means of egress."

The units above the three floors are described by the defendants as penthouse units and occupy part of the roof level. These units appear to us to comprise a fourth floor. Presently there are three units rented on this fourth floor and these three shall be denominated as the front, middle, and rear apartments.

"Ingress and egress to the front apartment on the fourth floor is by means of a stairway leading from the third floor corridor to the fourth floor." The only other means of egress from the front apartment is through a break-through door to the middle apartment or by climbing a ladder to the roof.

"Ingress and egress to the middle and rear apartments is by a stairway from the third floor corridor." There is a platform at the top of this stairway at the fourth floor level. Two doors open on to the platform, one door to the rear apartment and the other to the middle apartment. The only other means of egress from the rear apartment is a door in the bedroom leading to a balcony and then a climb on a ladder leading to the roof. The middle apartment has a window through which the occupant could reach the roof. There is also a break-through door between the middle and front apartment.

The trial judge found and recited in his order the following:

1. That the rear stairwell... between the 3rd and 4th floor is

a common stairwell (for the rear and middle apartments) and not a private entrance to an apartment.

2. That the second means of egress at the subject premises on the 4th floor or penthouse apartments is dangerous and hazardous as it requires either for entry to another individual's apartment and/or breaking of glass to open a door or window or the climbing and descending of a ladder or ladders.

The evidence establishes that at least two of the three apartments (the middle and rear apartments) have but one acceptable means of egress in violation of the Municipal Code of Chicago. We are not persuaded by defendants' argument that occupants of the fourth floor apartment could exit onto the roof of the building, climb a ladder about ten feet to the roof of a contiguous building owned by the defendants, and make their way down the rear stairs of the second building to ground level. This means of egress could hardly be said to comply with the ordinances or qualify as a safe means of egress. For these reasons we are satisfied that the order of the court ruling that the fourth floor of the subject property must be converted into a single apartment with egress to the stairways both at the front and rear of the building is a proper one and is amply supported by the evidence.

In support of their second contention, that the present Code should not be applied retroactively to them, the defendants

cite Kaukas v. City of Chicago, 27 Ill. 2d 197, 188 N.E.2d 700, and City of Chicago v. Miller, 27 Ill. 2d 211, 188 N.E.2d 694. In Kaukas, the Illinois Supreme Court reversed the judgment of the Circuit Court which held invalid a section of the Municipal Code prohibiting the use of glass panel doors as a secondary means of exit. The Court stated that there are no hard and fast rules as to whether the burden upon property owners is so great compared to the public benefit that an ordinance must be held invalid. However, the Court felt that the public had a right to the safest method of protection from fire which can be found and a Municipality has the duty to provide such protection. "It is clear that a city may lawfully make building requirements applicable to buildings in existence at the time the ordinance was enacted, even though these buildings complied with the ordinance in effect at the time the new ordinance was enacted." Kaukas v. City of Chicago, 27 Ill. 2d 197, 201, 188 N.E.2d 700, 702.

In City of Chicago v. Miller, 27 Ill. 2d 211, 214, 188 N.E.2d 694, 696, the companion case to Kaukas, the Court stated that "the mere fact that the building was originally constructed under the authority of a permit issued by the city in no way estops the city from bringing an action to compel compliance with the existing code." There the defendants contended that after a lapse of more than sixty years since the original construction of the building the city should be estopped from complaining about building violations. We fail to see how these two cases help the defendants' case and we hold that there are no special circumstances in the

APPENDIX C
No. 42401
Illinois Supreme Court

There was no opinion by this court, only a printed form denying petition for leave to appeal on September 25, 1969 and like denial of motion for rehearing on November 19, 1969.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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CITY OF CHICAGO, A MUNICIPAL CORPORATION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT.

BRIEF FOR RESPONDENT IN OPPOSITION.

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HOWARD C. GOLDMAN,
Assistant Corporation Counsel,
Of Counsel.

THE SUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

IN THE

Supreme Court of the United States

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ON PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT.

BRIEF FOR RESPONDENT IN OPPOSITION.

OPINION BELOW.

The judgment alleged by the petitioners to be reviewable by this Court is that of the Appellate Court of Illinois, First District. The Supreme Court of Illinois denied the Petition For Leave to Appeal from the decision of the Appellate Court. The opinion of the Appellate Court of Illinois is reported at 110 Ill. App. 2d 321 and at 249 N. E. 2d 184. It is also reproduced in Appendix B contained in the Appendix filed by the petitioners.

QUESTION PRESENTED.

Whether the petitioners properly preserved for review the question of deprivation of their alleged rights under the 14th Amendment of the Constitution of the United States.

REASONS FOR DENYING THE WRIT.

No substantial federal question is present and no constitutional issue was properly preserved for review.

The first time the subject of deprivation of constitutional rights under the 14th Amendment was even mentioned by the petitioners was in the Petition For Leave To Appeal to the Supreme Court of Illinois. As in the instant petition for a Writ of Certiorari, the Petition For Leave to Appeal to the Supreme Court of Illinois merely contained the unsupported statement that the petitioners were deprived of Due Process and Equal Protection under the law, without further discussion or citations to support these allegations. The Supreme Court of Illinois declined to hear the appeal from the decision of the Appellate Court and it is, therefore, the judgment of the intermediate court rather than the order of refusal which is before this Court under the provisions of 28 U. S. C. sec. 1257 (*Sullivan* v. *Texas*, 207 U. S. 416; *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U. S. 157, 160).

The petitioners failed to raise the constitutional question in either the trial court (Circuit Court of Cook County, Illinois) or in the reviewing court (Appellate Court of Illinois, First District). The issues raised by the petitioners were set out in the opinion of the Appellate Court as follows (110 Ill. App. 2d 321, 323; 249 N. E. 2d 184, 185):

> "The defendants argue that they are not guilty of any violations of the Municipal Code. Alternatively,

the defendants contend that their building was constructed under a permit issued in 1936 and conformed with all Code requirements at that time. The defendants question whether the public welfare demands retroactive application of the present Code in light of the fact that 'the defendants would suffer unreasonable exactions as compared with the resulting public benefit if they are forced to vacate two of the penthouse units which are the most desirable and command the highest rent in the building'. Lastly, the defendants claim that a 'property owner should be protected and the City should be estopped from ignoring the decisions, orders, and commitments made by its building department' in the past.''

The foregoing language from the opinion of the Appellate Court details the only issues raised by the petitioners in the trial court and Appellate Court.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that the Petition For a Writ of Certiorari should be denied.

Respectfully submitted,

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Attorney for Respondent.

MARVIN E. ASPEN,
HOWARD C. GOLDMAN,
Assistant Corporation Counsel,
Of Counsel.

January 20, 1970.

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A Municipal Corporation

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE

ILLINOIS SUPREME COURT

- - - -

PETITIONERS REPLY BRIEF FOR RESPONDENTS IN OPPOSITION

- - - -

John A. Hutter
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- - - -

PETITIONERS REPLY BRIEF FOR RESPONDENTS IN OPPOSITION

- - - -

REASONS FOR ALLOWING THE WRIT

Respondents do not deny claims of petitioners are right and call for justice. Respondent, like the Circuit Court, the Appellate Court, and the

Illinois Supreme Court refuse to address itself to the question: "If an apartment which meets all the requirements of the Chicago Municipal Code provision 67-4(e), "In Multiple dwellings, one exit door shall be permitted to a public corridor from a dwelling unit having not more than five habitable rooms and having an area not exceeding 1,000 square feet" may be excluded from the above provision for the reason that it has more than one level. Without comsidering this basic question, how could there possibly be due process as requested by Amendment 14?

In Abstract of Record, on page 25 John Hutter testified: "the single means of ingress and egress to the third floor corridor meet all Code requirements." The only witness presented by the City testified: "The major complaint is the egress problem on the top floor. There are a few items that have been complied with. Each apartment has a means of egress to the third floor."

At this time the only question before the Honorable Judge Frank H. Machala on the February 27, 1968 trial was "should these apartments be excluded from 67.4(e) because they contained more than one level." The court refused to rule on this question.

This trial at this time, was complete in every respect. The court should have issued his judgment. Instead he put defendants under double jeopardy by requiring another trial on the identical subject matter.

In the second or repeat trial before the Honorable Alvin J. Kvistad on

May 27, 1968. In Abstract of Record on page 29, petitioner testified: "The Defendants' contention is that if these apartments had the doors, entrances, egress and ingress on the third floor corridor, that is all that the building code requires."

On page 30: "Now if we seal up every other exit to all these so called penthouse apartments, if you seal up every exit except this one, we are still in full compliance with code."

This second court also ignored this presented question.

Petitioners raised this same question in its appeal to the Appellate Court, page 13 of Brief; respondents brief confirmed on page 12; also in their reply brief pages 2, 3, 4, petitioners state, with reference to 67-4(e), "This provision does not say that units cannot be bi-level, have stairways, furnished landings, locked doors, etc. Plaintiffs want to read this into the law which they should not be permitted to do."

In their Petition For Rehearing, on page 2 again with reference to 67-4(e) "The above section 67-4 is very clear and specific. There are no "ifs", "ands" or "buts" exceptions or modifying factors whatsoever.

"The trial court and this Appellate Court mistakenly attempts to read into Section 67-4 modification which do not exist."

"They are in effect saying that for an apartment to come within the

provisions of Section 67-4 it must be entirely on one floor or level."

"There is nothing in 67-4 that states a qualifying apartment must have a specific arrangement or rooms or levels."

In their petition for leave to appeal to the Illinois Supreme Court petitioners state on page 2 "Both Circuit and Appellate Courts are attempting to usurp the legislative power of the City Council when they attempt to modify the clear provisions of 67-4(e) by holding that the provisions should read "excluding apartments of more than one level."

None of these tribunals have answered this question. They simply ignore it and order petitioners deprived of the use of part of their real property contrary to law applicable and in direct violation of Amendment 14.

Respondents likewise (as was true of all State Courts) refuse to reply to question presented with reference to double jeopardy and the conduct of trial court which petitioners claim violates articles and amendments of the U.S. Constitution. The trial court could have fined or jailed petitioners. An official of respondent, stated in the press that a landlord could get six months in jail for not providing enough heat if his furnace broke down.

Thus the question of double jeopardy and due process was also ignored by respondent in its brief in opposition. The respondent claims that no substantial federal question is present and no constitutional issue was properly preserved for

review. Respondent states, "The first time the subject of deprivation of Constitutional rights under the 14th amendment was even mentioned by the petitioners was in the Petition For Leave To Appeal to the Supreme Court of Illinois." This statement does not conform to the facts.

At all times the Circuit Court in both trials refused to discuss petitioners claim that requirements of 67-4(e) were met, and suddenly called trial at an end and issued order. Petitioner had no time to raise constitutional question other than court was bound to follow the law 67-4(e) which it refused to do.

In petitioners brief and argument to the Appellate Court, petitioners again raised above point, also the following:

Previous to first trial and at first trial the sole witness for City, Lt. Roloff had in his possession correspondence tending to prove city had followed the law and approved apartments in question. In answer to Subpoena Duces Tecum on March 10, 1968, witnesses testified they had disappeared (page 9, 10, 11). This was a direct effort to conceal evidence.

On page 6 and 7 of their reply brief petitioners raised the question of lack of due process in the conduct of both Circuit Court trials.

On page 3 of petitioners Petition for Rehearing, they state "Courts must not be permitted to legislate and change a Municipal Code provision by judicial procedure. Judges, like everyone else should abide by and obey the law."

"The misinterpretation of 67-4 of the Municipal Code of Chicago, denies the defendants due process as provided by Amendment 14 of the U.S. Constitution because it deprives defendants of their property and income unlawfully."

"The action and decisions of the Trial and Appellate Courts clearly deprive the defendants of their property unlawfully without due process and in violation of Amendment 14 of the U.S. Constitution."

"Likewise were the infractions of due process perpetrated against the defendants as outlined in defendants brief including doubtful Service."

These same points were again raised by petitioners on page 5 of their petition for Leave to Appeal to the Supreme Court of Illinois.

In conclusion it appears to petitioners that respondent in no way responded to petitioners brief. It ignored both of the questions presented by petitioners on page 3 of their petition for writ.

Instead, the respondent misstated the facts on page 3 and on page 4 they quoted a portion of Appellate Court's decision which has no bearing on questions raised (see page 8 of petitioners petition for writ.

Conclusion

Petitioners pray that this court grant justice for the foregoing reasons it is respectfully submitted

that the petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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January 26, 1970